

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**  
**DOCKET NO. 2011-20-E**

In Re: Amended Project Development	)	<b>EXPLANATORY BRIEF AND JOINT</b>
Application of Duke Energy Carolina, LLC	)	<b>MOTION TO APPROVE</b>
for Approval of Decision to Incur Nuclear	)	<b>SETTLEMENT AGREEMENT</b>
Generation Pre-Construction Costs	)	
	)	

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The South Carolina Office of Regulatory Staff (“ORS”) on behalf of itself and the South Carolina Coastal Conservation League (“CCL”), the South Carolina Energy Users Committee (“SCEUC”), and Duke Energy Carolinas, LLC (“Duke” or the “Company”) (collectively referred to as the “Parties” or individually as “Party”), pursuant to S.C. Code Ann. § 58-33-270(G) (Supp. 2010), 26 S.C. S.C. Code Ann. Regs. 103-829 (Supp. 2010), and other applicable statutes, rules and regulations, including the Settlement Policies and Procedures of the Public Service Commission of South Carolina (“Commission”), revised June 13, 2006, hereby files this Explanatory Brief and Joint Motion to Approve a Settlement Agreement between the Parties in the above-captioned proceeding.

In support of this Joint Motion, the Parties state as follows:

1. On January 7, 2011, Duke filed an Amended Project Development Application (the “Application”) for approval to incur an additional \$229 million in pre-construction costs through December 13, 2013, for a total of \$459 million (including allowance for funds used during construction (“AFUC”). The Application was filed pursuant to S.C. Code Ann. § 58-33-225 (Supp. 2009), and the Commission’s prior orders in Docket No. 2007-440-E. The Parties

are parties of record in this proceeding. Intervenor Tom Clements is the only party of record who has not executed this Settlement Agreement.

2. Pursuant to S.C. Code Ann. §§ 58-4-10(B) (Supp. 2010), ORS is charged by law with the duty to represent the public interest of South Carolina in this proceeding. Accordingly, ORS has conducted a review of the Amended Application and Duke supporting documentation.

3. Duke has filed the Direct and Rebuttal Testimony and Exhibits of James E. Rogers, Janice D. Hager, Dhiaa M. Jamil, and Ronald A. Jones, who adopted Mr. Jamil's pre-filed testimony. ORS has filed the Direct and Surrebuttal Testimony and Exhibits of Nicholas Phillips, Jr. SCEUC filed the Direct Testimony of Kevin W. O'Donnell, and CCL submitted the Direct and Surrebuttal Testimony and Exhibits of Nancy Brockway. No other testimony has been filed.

4. Following extensive discussions concerning the issues in this proceeding, the Parties have agreed that the public interest would be served by stipulating to a comprehensive settlement of all issues in this proceeding. The agreement detailing the terms and conditions of the settlement (the "Settlement Agreement") is attached to this Joint Motion as Attachment A. The basis and rationale for the Settlement Agreement are set forth in the Settlement Agreement itself and, Duke will separately file settlement testimony sponsored by Ronald A. Jones.

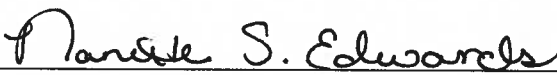
5. Currently, the Hearing in this matter is scheduled to start on May 16, 2011. Pursuant to the Commission's Settlement Policies and Procedures, the Parties jointly move that the Hearing begin as scheduled and that they be allowed to present the Settlement Agreement and testimony supporting it at that time. The Parties recognize that a full seven (7) days advance notice has not been provided; however, the Parties respectfully submit that negotiations took place up to and including Friday, May 13, 2011.

6. The Parties jointly move that the Commission approve the Settlement Agreement as being in the public interest.

WHEREFORE, having fully set forth their Explanatory Brief and Joint Motion, the Parties request that the Commission issue an order approving the Settlement Agreement as just, fair and reasonable and supported by substantial evidence.

Respectfully submitted,

**South Carolina Office of Regulatory Staff**

  
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May 13, 2011

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2011-20-E

May 13, 2011

In the Matter of:	)	
	)	
Amended Project Development Application of	)	SETTLEMENT AGREEMENT
Duke Energy Carolinas, LLC	)	
for Approval of Decision to Incur	)	
NucleaGeneration Pre-Construction Costs	)	
	)	

The Settlement Agreement ("Settlement Agreement") is made by and among the South Carolina Office of Regulatory Staff ("ORS"), the South Carolina Coastal Conservation League ("CCL"), South Carolina Energy Users Committee ("SCEUC"), and Duke Energy Carolinas, LLC ("Duke Energy Carolinas" or the "Company") (collectively referred to as the "Parties" or sometimes individually as "Party").<sup>1</sup>

WHEREAS, the Company has prepared and filed an Amended Project Development Application (the "Application") seeking approval of its decision to continue to incur additional pre-construction costs for the Company's proposed William States Lee, III Nuclear Station in Cherokee County, South Carolina ("Lee Nuclear Station");

WHEREAS, the Public Service Commission of South Carolina (the "Commission") opened this docket to consider Duke Energy Carolinas' request pursuant to the procedure established in S.C. Code Ann. § 58-33-225 (Supp. 2010);

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<sup>1</sup> Tom Clements is not a party to the Settlement Agreement.

WHEREAS, the Parties to this Settlement Agreement are parties of record in the above-captioned docket;

WHEREAS, ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10(B) (Supp. 2010);

WHEREAS, ORS has conducted an investigation and examination relative to the matters raised in the Application;

WHEREAS, the Parties have varying positions regarding the issues in this case;

WHEREAS, the Parties have engaged in discussions to determine if a settlement of some or all of the issues would be in their best interests and, in the case of ORS, in the public interest;

WHEREAS, following those discussions, the Parties have determined that their interests, and ORS has determined that the public interest, would be best served by stipulating to a comprehensive settlement of all issues pending in the above-captioned case under the terms and conditions set forth herein; and

WHEREAS, the Parties to this Agreement believe that it is in their best interests and those of the State of South Carolina to enter into a Settlement Agreement relating to this matter to avoid the additional expense which the litigation of their positions would occasion in this proceeding.

NOW, THEREFORE, the Parties hereby stipulate and agree to the following terms:

**I. STIPULATION OF TESTIMONY AND WAIVER OF CROSS-EXAMINATION**

The Parties agree to stipulate into the record before the Commission this Settlement Agreement. The Parties further agree to stipulate into the record the pre-filed direct

testimony, supplemental testimony, rebuttal testimony, and settlement testimony and exhibits, if any, of Duke Energy Carolinas' witnesses James E. Rogers, Janice D. Hager, Dhiaa M. Jamil, and Ronald A. Jones; as well as the direct, settlement and surrebuttal testimony and exhibits, if any, of ORS witness Nicholas Phillips, Jr.; the pre-filed direct testimony of SCEUC witness Kevin W. O'Donnell; and the direct and surrebuttal testimony and exhibits of CCL witness Nancy Brockway; without objection, change, amendment or cross-examination. (collectively, the "Stipulated Testimony"). The proposals contained in the Application and Stipulated Testimony of Duke Energy Carolinas are incorporated by reference into this Settlement Agreement as pre-filed, except as otherwise changed by this Settlement Agreement. The Parties reserve the right to engage in any redirect examination of witnesses as necessary to respond to issues raised by the examination of their witnesses, if any, by non-Parties to this Agreement or members of the Commission or by late-filed testimony by non-Parties to this Agreement.

**II. COMPREHENSIVE SETTLEMENT AMONG DUKE ENERGY CAROLINAS,  
ORS, CCL AND SCEUC**

For purposes of this Settlement Agreement and in recognition of the mutual compromises contained herein, Duke Energy Carolinas, SCEUC, CCL and ORS further agree that the Stipulated Testimony, the Application, and this Settlement Agreement conclusively demonstrate the following:

1. In its Application in this docket the Company sought approval of the prudence of the Company's decision to incur additional project development costs from January 1, 2010, through January 31, 2013. Those costs were estimated at \$229 million.

2. As a compromise to their respective positions, Duke Energy Carolinas, SCEUC, CCL and ORS stipulate and agree that the Commission should find that it is prudent for the Company to continue to incur development costs for the Lee Nuclear project only to the extent necessary to maintain the current schedule for obtaining a Combined Construction and Operating License ("COL") from the Nuclear Regulatory Commission to support a commercial operation date for the Lee Nuclear project in the 2021-2023 time frame. The Parties agree the the Commission should allow only the absolute minimum amount of dollars necessary to keep the nuclear option available. The Parties agree that the Commission should allow expenditures from January 1, 2011 through June 30, 2012 to be no more than \$75 million without AFUDC not to exceed \$120 million including AFUDC. The Parties also stipulate and agree that the prudence determination in this proceeding will only apply to the expenditure of the funds as described in this paragraph. In any proceeding to recover costs covered by this paragraph Duke must show that the activities that it undertook met the requirements of this paragraph.

3. While the North Carolina General Assembly is in session Duke Energy Carolinas agrees to file monthly reports with the Commission and ORS regarding the status of legislation to allow for recovery of financing costs outside of a rate case in North Carolina.

4. Duke Energy Carolinas agrees to file a quarterly report with the Commission and ORS on expenditures and AFUDC.

5. Duke Energy Carolinas agrees that any change in ownership interest, output allocation, sharing of costs or control and any future option agreements concerning the proposed Lee Nuclear Station shall be subject to the prior approval of the Commission.

6. The Parties agree that joint ownership of new nuclear units in South Carolina is to be encouraged among the electric service providers operating in whole or in part in South Carolina. As part of this Agreement, Duke commits that it will continue to pursue good faith negotiations with Santee Cooper and/or SCANA regarding an interest in V.C. Summer Units 2 and 3. Duke agrees to file a monthly report with the Commission under seal, available to parties who have signed a confidentiality agreement in this proceeding, on the progress of its negotiations.

### **III. REMAINING TERMS AND CONDITIONS**

7. Duke Energy Carolinas, SCEUC, CCL and ORS agree to advocate that the Commission accept and approve this Settlement Agreement in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding.

8. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission in its entirety. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Settlement Agreement and the terms and conditions contained herein.

9. The Parties agree that signing this Settlement Agreement (a) will not constrain, inhibit, impair, or prejudice their arguments or positions held in future or collateral proceedings; (b) will not constitute a precedent or evidence of acceptable practice in future proceedings; and (c) will not limit the relief that any Party may seek or advocate in any future proceeding. If the Commission declines to approve this Settlement Agreement in its entirety,



then Duke Energy Carolinas, SCEUC, CCL or ORS may withdraw from the Settlement Agreement without penalty or obligation.

10. This Settlement Agreement shall be interpreted according to South Carolina law.

11. The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Settlement Agreement by affixing its signature or by authorizing its counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and e-mail signatures shall be as effective as original signatures to bind any Party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement. The Parties agree that in the event any Party should fail to indicate its consent to this Settlement Agreement and the terms contained herein, then this Settlement Agreement shall be null and void and will not be binding on any Party.

**[PARTY SIGNATURES TO FOLLOW ON SEPARATE PAGES]**

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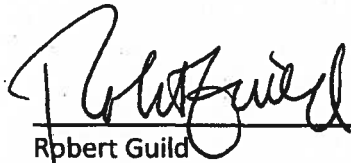
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**Representing the South Carolina Coastal Conservation League**

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Robert Guild

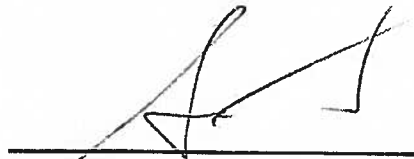
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A handwritten signature in black ink, appearing to read 'Scott Elliott', is written over a horizontal line.

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**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**  
**DOCKET NO. 2011-20-E**

IN RE:

Amended Project Development Application	)	
of Duke Energy Carolinas, LLC for Approval	)	<b>CERTIFICATE OF</b>
of Decision to Incur Nuclear Generation Pre-	)	<b>SERVICE</b>
Construction Costs	)	

This is to certify that I, Chrystal L. Morgan, have this date served one (1) copy of the **EXPLANATORY BRIEF AND JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT** in the above-referenced matter to the person(s) named below by causing said copy to be sent via electronic mail and addressed as shown below:

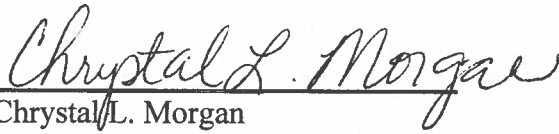
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Chrystal L. Morgan

May 13, 2011  
Columbia, South Carolina